

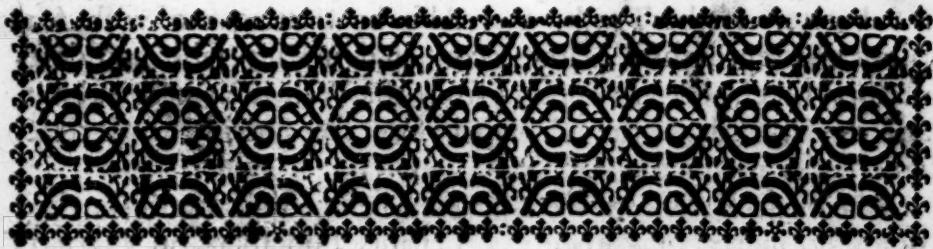
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PETITION

FOR

John Cunningham of Enterkine.





November 1st. 1740.

Unto the Right Honourable, The Lords of Council and Session,

T H E
P E T I T I O N
O F
John Cunningham of Enterkine,

Humbly sheweth,

 **H**AT where Mr. *Patrick Widdro*, Minister at *Tarbolton*, and *Alexander Montgomerie* of *Coilsfield*, were jointly pursued at my Instance before the Sheriff of *Ayr* and his Deputes, on account of certain real Injuries done your Petitioner; in so far as, in *June 1739*, they had made up, dictated, signed, and dispersed a false and infamous Libel against me, under the Character of a Judge, or Justice of the Peace, and Elder of the Church; as if I had been guilty of threatening Men to sign

A

Writs

Wrts that bordered on Perjury, and that I had Accession thereto; likewise that I was a publick Disturber of the Peace, and a Subverter of the Truth, &c. Also by treating me with scurrilous and reproachful Names, contain'd in this false and defamatory Libel, &c. as appears from the Writ itself here exhibit, and as set forth in the Pursuit before the Sheriff, an Extract whereof is produced.

Also these Defenders were pursued before the Sheriff for their riotously incroaching upon my Tenants Possessions in *February 1739*; thereby invading my Right of Property, and inclosing certain Parts of my Ground within a Dyke, built by Mr. *Widdro*, without my Consent, or Authority of any Judge, as appears from a Decree of Cognition and Value, dated 21st of *February 1739*, also produced.

Further, Mr. *Widdro* was pursued before the Sheriff, for certain Immoralities committed by him, such as, his breaking the Sabbath, by frequent trimming and shaving his Beard on that Day; Also for his mocking of Piety and religious Exercises, contrary to the 31st *Act*, 6th *Seſſ.* King *William's* Parliament, and others, as contain'd in the Libel before the Sheriff.

Upon the 12th of *September* last, the Defender produced your Lordships Advocation, but denies none of the Accusations laid against them, as indeed they cannot righteously do.

Both Pursuer and Defenders join Issue in bringing this Affair before your Lordships, and most willingly subject themselves to your Lordships Judgment in every Article of the Cause; only, in regard Actions of this Kind, are not in Use to be prosecute in the same Manner, as Actions purely civil, the Pursuer has therefore subjoined to this Petition by way of Case, the Injuries and riotous Practices, jointly committed by the Defenders; also the particular Immoralities and Impieties committed by Mr. *Widdro* himself, as they stand in the Libel, that was before the Sheriff.

Lastly, For shortning this Procesſ, the Facts to be confessed or denied by the Defenders are presently put in the Clerk's Hand,



Hand, as hereto annexed; that so the whole may be in View, and proceeded in, after what Method shall seem meet to your Lordships.

May it therefore please your Lordships, in respect this Cause is an Action not purely civil, as your Lordships will observe from this, and the annexed Case; Therefore to ordain the Defenders to produce their Advocation in the Clerk's Hand, without putting up Protestations, or abiding the Course of Rolls, as in other Actions. Next, That the several Points be prosecute in your Lordships own Presence, as set forth in the Pursuit that was before the Sheriff of Air; or otherways, That your Lordships will please remit this Petition to the Lord Ordinary on the Bills, with Power to his Lordship to determine or report, as your Lordships shall find just.

According to Justice, &c.

JO. CUNINGHAME of Enterkine.

The CASE John Cunningham of Enterkine
RESPONDENT,

A G A I N S T

Mr. Patrick Widdro Minister at Tarbolton,
and the Laird of Coilsfield, Appellants, from
the Sheriff of Air, to the Lords of Session.

IN the Action at Enterkine's Instance against the Minister at Tarbolton, and this Gentleman Coilsfield, before the Sheriff of Air, great Struggle was made by the Defenders to obtain Delays in this Cause, in which they were pretty much indulged, till

till at last, even before the Cause was *litis contestat*, or so much as a judicial Compearance made by the Defenders, they found Means to procure an Advocation, which, 'tis like, might been prevented by the Pursuer, had it been duly adverted to.

But now that the Advocation is past, and admitted by the Sheriff, *Enterkine*, as in his Petition, willingly acquiesces to join Issue with the Appellants in advocating the Cause, that the same may be speedily brought to a Decision by your Lordships, to whose Determination the Pursuer chearfully submits the same.

In the mean Time, that we may know who are the Defenders, it is to be noticed, that *John Alexander*, Presenter in *Tarboloun Church*, is none: For, on the 26th of *August* last, the Pursuer formally passes from *John Alexander*, and declared he only insisted against the other two Defenders, which the Pursuer signs in Presence of the Judge, and the Advocation was not expedie till the 5th of *September* last, and presented to the Sheriff on the 12th of the said Month: So that tho' *John Alexander's* Name be in the Advocation, yet he is not here a Defender, being passed from before the Advocation did subsist.

Accusation 1st.] The first Accusation brought against the Defenders, is, *imo*, That here an innocent Person is most injuriously traduced and defamed by the two Defenders, Mr. *Widdro* and *Coilsfield*, as being guilty of the most gross and horrid Crimes, next to capital, so far as a malicious Mind could contrive; and that these Crimes are laid to the Plaintiff's Charge by the Defamers, as being committed by him, who was under the Character of a Judge or Justice of Peace and Church Elder; to wit, say the Defenders, "That he, *Enterkine*, a Justice of the Peace, and Elder of the Church, had acted villainously, falsely, knavishly, and that he was a Practiser upon Men, by Threats and otherways, to sign Writs that bordered on, or had Accession to Perjury; and that he, the Plaintiff, was a publick Disturber of the Peace, and was a Subverter of the Truth, &c."

This

This infamous Libel, or real Injuries, are first drawn up by the said Mr. *Patrick Widdro*, by his dictating them to *John Alexander*, his own Precentor, as he cannot deny.

Then, the above false Accusations thus injuriously conceived, drawn up, and dictate by him to *John Alexander*, is thereafter brought to *Coilsfield*, who, before, or upon the 6th of *June* 1739, signs the same, as appears from the Writ itself.

Further, This false defamatory Writ, is by Ways and Means thrown in, and read to the Presbytery of *Air*, and after being read there, Mr. *Widdro* cannot refuse, but that he craved, in open Presbytery, "he might be allowed to transform the said " Writ into a formal Libel against the Pursuer, in regard, he " said, it was his Concern so to do, the Subject in it being his " Manse and Glebe," or Words to this Purpose.

This the Presbytery would not listen to, but stopped Mr. *Widdro* from speaking more on this Head, and seem'd displeased with him for what he had said, and with the Paper given in.

That this Writ was purely an Incendiary Paper, as well as a false and defamatory Libel, appears, in that there was no Process at the Time, *viz.* 6th of *June* 1739, depending on either Side against the other; but he, Mr. *Widdro*, *right or wrong*, seeks to frame a defamatory Libel against the Plaintiff, one of his Heritors, and a residing Parishoner, who had never injured him: Also the said defamatory Writ being concerning his Manse and Glebe, he seems to have influenced *Coilsfield* to sign that Paper, the better to carry on his bad Design of *Defamation*; wherefore that all is done *animo injuriandi*, is clear as Day-light.

Besides, the Pursuer, in Presence of the Presbytery, told, he always did detest and abhor such vile Practices, as set forth in the Defenders Libel, and gave them an absolute Defiance to make out their Accusations, or make appear the least undue Step taken by the Plaintiff in that Affair anent Mr. *Widdro*'s Manse and Glebe; and from that Day to this, they never had the Assurance to attempt bringing the least Proof of their false defamatory Allegations.

And here, by the Way, we must beg Leave to observe, that the Proces, which afterwards happened at Mr. *Widdro's* Instance before the Lords of Session, anent having a new Manse built him, was in a great Part opposed, because of the bad *Qualities* that early appear'd in this *Incumbent*, nottou to the Country Side, but too long, and from the Purpose here to be narrated.

That such infamous Libels, or real Injuries are relevant to infer a severe arbitrary Punishment, and a high Fine, is evident from Sir *George M'Kenzie's* Criminals, Tit. 30th, of *Injuries, &c.* Page 154. § 5th. bearing these Words, *viz.* " That infamous Libels, *libelli famosi*, are the most permanent of all Injuries, and therefore are most severely punished; and in it the Offender shews more Design, and therefore is more guilty: Also he who writes, dictates, or affixes infamous Libels, or causes write, dictate, or affix them, is punishable." So far says Sir *George*.

In consequence of these Laws, and at the Issue of the Cause, we humbly hope your Lordships will find Ground to order the principal defamatory Libel to be delivered up to the publick Magistrate of the Place, and ordain such a *Stigma* to be put thereon, as such Writs deserve: Also, that the Dictator or Drawer, and Signer thereof, be punished and fined, in the same Manner as if they themselves were guilty of the said horrid and gross Crimes whereof they falsely accuse the Plaintiff, which we apprehend, by the *Lex Talionis*, is well founded on Scripture Rule, *viz.* *That the same Measure you have met to others, it shall be measured to you again.* More especially, when the false Defamation is committed by a Gospel Minister, who, of all Men, ought to keep farthest from such Crimes, and exhort others to do the like.

[2d *Accusation*] Next, This Minister, under whose Influence *Coilsfield* seems to be, uses most railing, reproachful and abusive Language against the Pursuer, without the least Provocation given;

given ; such as, in Companies he calls the Pursuer by the Name of *Scoundrel*, and seems to influence *Coilsfield* to do the same : Also he has been heard say, "That the Plaintiff is nothing but a Hypo-
 " crite, a Cloaker of Knavery, under a Profession of Religion,
 " &c. and exhorts Neighbours not to keep Company with the
 " Pursuer, otherwise (says he) no honest Man will keep Com-
 " pany with them." What Punishment a Minister of the Go-
 spel deserves for such obraiding Language, even to a Gentleman
 in his own Parish, who had always used him and *Coilsfield* most
 civilly, is humbly submitted to the Lords Decision.

3d *Accusation*] Again, the Pursuer, on a Complaint of some
 of his Tenants, particularly *John Campbell* in *Tarbolton*, repre-
 senting, " That this Minister, at his own Hand, was incroach-
 " ing on their Possessions; by taking off certain Parts of their
 " Ground, and inclosing the same within a Dyke he was buil-
 " ding."

Also, that he or his Workmen had taken up March-stones,
 and was altering Part of the High-way, throwing it upon the
 Pursuer's Ground.

The Plaintiff, for keeping up Peace with Mr. *Widdro*, ad-
 vised him by a Letter in *February 1739*, sent by *John Campbell*,
 to take three judicious Men, mutually chosen by him and the
 Tenants, to view the Ground and Marches, and to determine
 betwixt them, before he proceeded in building this Dyke :

Yet, contrary to this Advice, the Minister goes on, and, a this
 own Hand, takes off some small Parts from each of three Tenants
 Possessions, to the Extent of eleven Square Ells and seven Square
 Foot, afterwards measured in Presence of Mr. *Widdro*, and
 valued to *L. 4 Sterling*, as instructed from a Decree of Cogni-
 tion and Value put thereon, dated 21st of *February* said Year
 1739, produced in Process.

Coilsfield, the other Defender owned, " It was by his Order
 " that Mr. *Widdro* did so, and told there was as much of *Coils-*
 " *field's* Ground left to the Plaintiff, as that which was taken
 " off.

" off the Tenants Possessions ; and seeing the Law allowed the
 " Incloser of Grounds to make straight their Dykes, the Pursuer
 " therefore could not complain ;" or Words to this Purpose.

It was answered by the Plaintiff, *1mo*, That as to *Coilsfield's* Ground, the Pursuer had no Title thereto, nor would he meddle therewith. *2do*, That tho' the Law encouraged Policy of this Kind, yet, at the same Time, the Incloser of Grounds behoved to act either with Consent of the Neighbour Heritor, or by the Authority of a Judge, neither of which was done in the present Case ; so that Mr. *Widdro's* proceeding in the Manner he did, was a plain Riot, and an invading of the Plaintiff's Right, for which he ought not only to pay the Value, but be severely fined for such an undue Procedure ; more especially, that this Riot was committed by a Minister, who ought to be an Example to others against such bad Practices.

4th and 5th Accusation.] Mr. *Widdro* the Minister goes from one Evil to another, and hereby becomes a Stumbling and Offence to most in his Parish ; for he being a Player at Cards, which only of late has crept in amongst the Clergy, he, it would seem, by his unseasonable Gammimg, neglects to trim or shave his Beard on the *Saturday* ; and therefore thinks fit to do it on the LORD's Day, and that not once or twice, but frequently, which being, as we conceive, an evident Breaking of the Sabbath, he incurs the Penalty of the Law, to the Extent of the fifth Part of his Stipend, being 160 *L. Scots, toties quoties*, that such Impieties are committed by Gospel-Ministers, in Terms of the *Act* 18th and 38th, *Parl.* 1st, *Charles II.* Also *Act* 31st, 6th *Seff.* *King William's 1st Parl.* For,

As to playing at Cards, it is to be observed, That in the Time of *Paganism*, any Clergyman that was found using this Game of Cards, was (being convicted thereof) immediately excommunicate the Church ; so how this Latitude comes now to take Place by Clergymen under Christianity, and to pass unpunished, is a Question which deserves the Lords Consideration : But in all Events,

Events, 'tis certain, that the unseasonable playing at Cards by Ministers on the *Saturday*, when they should be preparing for the Sabbath, and putting all their ordinary Affairs by-hand ; such Way of Gamming, we humbly conceive, is punishable, besides Church-Censure.

Further, As to that of Trimming and shaving Beards on the Sabbath, we cannot but observe, That some Years ago, a Petition from the Journeymen and Apprentices of Barbers at *London* was presented to the *British* Parliament, complaining,

“ That they could not attend the publick Prayers and Divine Service in the Church on the Sabbath, because of their Masters fending them through his Customers, to trim and shave Beards, and dressing Pirewigs, while they ought to be employed as above ; Therefore craved Redress, as should seem meet to the Parliament. ”

Accordingly the Parliament gave Redress ; and 'tis informed, That Sir *John Bernard*, then Lord Mayor of *London*, called his Council, made Intimation of this Petition and Deliverance thereon, “ And forthwith discharged all the Community in *London*, to practise trimming and shaving Beards on the Sabbath, under a certain considerable Fine, to be levied from the Transgressors.”

Instances likewise could be given in our own Country, where trimming and shaving of Beards on the LORD’s Day are in use to be punished, and a Fine exacted from the Offenders. Wherefore, that Mr. *Widdro* comes directly to incur the Penalty of the fifth Part of his Stipend (as being a Minister) for thus breaking of the Sabbath, seems plain from the Act of Parliament above-recited ; and 'tis humbly hoped will be so found by the Lords.

6th and 7th *Accusation.*] Mr. *Widdro* is also accused for his frequent abstaining thanking GOD at Meals where he resides, as it would seem by a Principle ; also for his not only neglecting Family-worship where he abides, but likewise, “ That he maintains the Acts of the Church in *August 1647*, which en-

" joins it, TO BE OBSOLET, out of Fashion, or prescribed,
" being near 100 Years since that Act was made," or Words to
this Purpose, as he has been heard say.

That these appears to be Mr. *Widdro*'s Principles, is also evident from a printed Conference he had with one of his Parishioners the 1st of July last, vouched from his Practice, where Mr. *Widdro* maintains it as his Opinion, " That unless the Head of a Family require a Minister to crave a Blessing or give Thanks, that the Minister is not bound to do either; and the like as to Family-worship :" He affirming, " That in his Judgment it lies not at the Minister's Door to perform any of these Duties, but as he pleases, these being incumbent on the Heads of Families, as has been said, and that Ministers may do or not as they think fit, tho' neglected by the Master of a Family, where a Minister is present, or resides." Thus far from the printed Conference.

This seems strange Doctrine in a Minister of this Church; and his thus omitting so necessary Christian Duties, renders him obnoxious, not only to the Penalties contained in the fore-cited Acts of Parliament, as being hereby a Mock of Piety, and a Neglecter of religious Exercises, but likewise to be further punished by the Judges, besides a severe Church-Censure, for maintaining such pernicious Principles, dangerous to human Society, and the Christian Faith.

8th *Accusation*] Lastly, This Minister Mr. *Widdro* was pursued before the Sheriff of Ayr, in that, notwithstanding the Book, called the *Confession of Faith*, is by Act of Parliament, June 7th 1690, intituled, *Act ratifying the Confession of Faith, and settling Presbyterian Church-Government*, is by the said Act, and Acts of the Church, declared to be our Standart of Doctrine and Kirk-Discipline, as agreeable to the Scriptures; which *Confession*, all Ministers of this Church, at their Admission, do swear and sign to be the *Confession of their Faith*, and that to the utmost of their Power they will maintain the same; yet

Mr.

Mr. *Widdro*, who swears to and signs this *Confession*, tells in the foreaid printed *Conference*, and can be vouched from his late Practice, (whatever he now does for Fear of being challenged) That at his baptizing Children he maintain'd, he was not obliged to take Parents bound to make this Book the Rule of their *Confession*, tho' in his Oath he acknowledges it to be agreeable to the Scriptures, yet is not (as he lays) to be the Standart of *Education*, but only in so far as Parents themselves think proper, ranking it (as he has been heard say) among other Books of human Composure; and so seems not to regard it, as having the Sanction of this Church, nor as it is the publick Law of the Country, whereby he weakens and inervates that Summary taken from Scripture, and established as the Principles of our Presbyterian Profession.

We humbly conceive, that Mr. *Widdro* hereby not only deviates from, but puts Contempt upon the publick Law of the Land, establishing our Doctrine and Kirk-Discipline, confirmed by Church-Assemblies; likewise that he deviates from his Admision Oath when he came to be a Minister, and thereby incurs the Penalty in the *Act 31st, 6th Sess.* King *William's* Parliament; in that, by his not observing his foreaid Admision Oath, he comes to be a Despiser, and consequently a Mocke of religious Bonds, nothing being more solemn than an Oath, and his not punctual performing these sacred Ties, is a high Impiety, and most justly punishable by your Lordships; but Prejudice also of Church-Censure, which we humbly conceive merits the highest; more especially, when the preceeding false defamatory *Libel* against the Pursuer, with Mr. *Widdro's* other Impieties and bad Practices are joined therewith, so as that he Mr. *Widdro* be convicted of the same.

Upon the whole, we humbly hope, when this Cause comes to be heard on both Sides, your Lordships will have no Diffi-
culty to find, That the Accusations set forth against these De-
fenders, are separately relevant to infer a severe arbitrary Punish-
ment and Fine; besides, that the Defenders ought to pay the
Pursuer's

Pursuer's Damages and Expences in carrying on a Pursuit, so absolutely necessary for vindicating the Plaintiff's Honour and Character, against Crimes laid to his Charge, next to Capital; besides the maintaing his just Property, wrongously invaded by the Defenders; as also for detecting the Impieties and corrupt Principles of a Clergyman, dangerous to the Church, and contrary to the publick Law of the Country.

In Respect whereof, &c.

JO. CUNINGHAME of Enterkine.

Follows the F A C T S relative to the defamatory Libel, and others, pursued by *John Cunningham* of *Enterkine*, first before the Sheriff of *Air*, and now before the Lords of Session;

A G A I N S T

Mr. *Patrick Widdro* Minister at *Tarbolton*, and *Alexander Montgomery* of *Coilsfield*, to be confessed or denied by them, before leading a Proof by Writ or Witness, are as follows, *viz.*

A R T I C L E I. in the Libel.

1mo, **D**ID not you Mr. *Patrick Widdro*, the Beginning of June 1739, dite or dictate to *John Alexander* your Precentor, a Writ or Paper, called *Remarks*, &c. dated before or on the 6th of June 1739, in which the Pursuer, under the Character of a Justice of the Peace, and Elder of the Church, is said to have acted villainously, falsely, knavishly, and that he was a Practiser upon Men, by Threats and otherwise, to sign Writs that had Accession to, or bordered on Perjury, and that he was a publick Disturber of the Peace, and a Subverter of the Truth? And did not you, or *John Alexander*, or both together, present this Paper to the Laird of *Coilsfield* for to sign,

sign, or was it not signed by him, with your Knowledge and Concurrence ?

2d^o, Was not this Paper of *Remarks* given in to the Presbytery of *Air*, by the Hand of *Thomas Girven* late Provost there? And after being publickly read by the Clerk, did not you say in open Presbytery, That you would *adopt* that Paper, signed by *Coilsfield*, into a Libel against *Enterkine*? And did you not crave a Double thereof from the Presbytery for this End, as being your Concern? Also, did not several of the Ministers, particularly Mr. *John M'Dermitt* Minister at *Air*, desire you to sit down, and stopped you from speaking any further upon that Affair? And if the whole Presbytery, or at least many of them, did not seem to show a Displeasure, That that Paper of *Remarks* should have been given in to them; and also a Displeasure at you, for what you had said, yea or not?

3d^o, If or not, at any Time in your Conversation, since your Settlement as Minister of *Tarbolton*, did you not call the Pursuer by the Name of a *Scoundrel*? And did not you say to some certain Persons, That *Enterkine* the Plaintiff was nothing but a *Hypocrite*, and did *cloak his Knavery by a Profession of Religion*? And if you did not exhort some of the Neighbourhood not to keep Company with, or converse with the Pursuer, otherwise said you, *No honest Man would keep Company with, or converse with them*, or Words to this Purpose? And further, That you exhorted them thus to do, from the Regard or Kindness you had to them.

A R T I C L E. II.

1^o, Did not you receive a Letter from *Enterkine*, by the Hand of *John Campbell* in *Tarbolton*, or some other, dated in *February 1739*, telling, That he, *Enterkine*, was informed, you was incroaching on his Ground by the Dyke of your Inclosure; and that he advised you would take three judicious Men, to be mutually chosen by you and his Tenants Possessors

of the Land to determine the Marches and view the Ground, before you proceeded in building your Dyke ?

2do, Did not you come down to *Enterkine's* House next Morning, after you received this Letter, and told him, That the Law obliged him to give you off as much of his Ground as would straight your Dyke, and that you had taken no more, which you said was but very inconsiderable ? Besides, did you not say, That you had left out Ground belonging to *Coilsfield* to a greater Extent, than that of the *Purifiers*, which you had taken ; and therefore, you thought you had done no Harm, or Words to this Purpose ?

3to, After your Dyke was put up, was not you present with one *George Cree*, *David Weir*, and some others sent by *Enterkine* to cognosce upon the Quantity of Ground you had taken from him and his Tenants ? And if you did not give the Men a Shilling, or some Money, to be exact in Measuring ? And if you brought not with you some of *Coilsfield's* Servants to be present at the Measuring, particularly *John Harlie* the Gardner, and a Son of the Laird of *Dunlop's*, who then staid at *Coilsfield* ?

4to, After this Cognition, did not *Enterkine* write you a Letter, signifying the Extent and Value of his Ground inclosed within your Dyke, and that the same amounted to L. 4 Shilling ? And if in that Letter, *Enterkine* did not demand immediate Payment, otherwise that he or his Tenants would pursue you for a Riot and Intrusion, or as an Invader upon *Enterkine's* Right, without his Consent, or the Authority of a Judge ?

5to, Was not some of the March-borders taken up and lifted, when you or your Workers viewed the Ground, before you began to build the Dyke ? And if the High-way was not in some Part altered by you, and opening a Ditch ? And if Part of the said High-way was not thrown upon the Pursuer's Ground ?

6to, Have you not played at Cards several Times since your Settlement as Minister at *Tarbolton*, in August 1738, both thro' the

the Week, and upon the *Saturday*, within the Houses of *Coilsfield, Ochiltree, and else-where*.

2d^o, Did you not acknowledge to the Pursuer in *July* last, and to several others since that Time, that you had sometimes shaved your Beard on the Sabbath; that you thought it was no Sin, and that your Conscience never checked you for it, or Words to this Purpose?

3t^o, Have you not frequently thus practised shaving your Beard upon the Sabbath, since your Settlement as Minister of *Tarbolton*, within the Houses of *Coilsfield, Ochiltree, and else-where*, to the Number of Twenty several Times, and upwards?

A R T I C L E IV. and V.

1mo, Have you not frequently neglected saying Grace, or giving Thanks to GOD after Meals, since you was Minister at *Tarbolton* in the Family where you reside? Likewise do you not neglect Family-worship thro' the Week where you abide, if it be not upon the Sabbath-night, and if Family-worship even then be not frequently omitted by you?

2d^o, Did you not acknowledge to the Pursuer in *July* last, and to several others since that Time, That it was your Opinion, that unless the Head of a Family did require a Minister to crave a Blessing or give Thanks, that the Minister was not bound to do either? And did you not contend, That it was properly the Duty of Heads of Families to perform themselves, and not Ministers; for that these Duties lay not at the Minister's Door, but as he pleased, and was desired, or Words to this Purpose?

3t^o, Did you not affirm in your Kirk-Session, in *April 1739*, That the Act of Assembly 24th of *August 1647*, *Seſſ. 19th*, enjoining Family-worship upon Ministers to be performed by them, where, or in whatever Place they reside, That that Act was **OBSEOLET**, out of Fashion, or prescribed, and so was out of Date, being near 100 Years since that Act was made?

Did

id you not thus affirm, in these or the like Words, yea or not?

ARTICLE VI.

1^{mo}, Is it true, that several Times since you was a settled Minister, That at your administrating the Sacrament of Baptism, you take not Parents bound to educate their Children according to the Principles set down in our *Confession of Faith*? But only tells Parents, That if they think fit they may read over that Book, with others of human Composure, at their Conveniency, and may inculcate upon their Children what they judge proper therein to be followed as they please, or Words to this Purpose.

2^{do}, If you did not acknowledge to the Pursuer in *July* last, at his own House, That you had several Times baptised after this Manner, and that you judged it to be a very right Method, and according to your Principles; for that you was resolved never to bind Parents to educate their Children, further than what was agreeable to their own Consciences; and if you did not affirm, That it was your Opinion, That Mens Consciences must be presumed to direct them in what was right; and therefore, that it would be extreamly wrong to oblige, or tie down Parents, but according to their own Light, or Words to this Purpose?

3rdo, When you was asked at *Enterkine's* House in *July* last, Whether you believed the *Confession of Faith* to be agreeable to the Scriptures? If you did not call this a *captious Question*, and so refused to make Answer, yea or not?

FACTS

FACTS to be confessed or denied by *Alexander Montgomerie of Coilsfield*, the other Defender, before leading a Proof by Writ or Witnesses.

1^{mo}, DID not you *Alexander Montgomerie of Coilsfield*, before, or upon the 6th of June 1739, sign a Paper, called *Remarks*, in which you accuse the Pursuer, under the Character of a Justice of the Peace, and Elder of the Church, That he had acted villainously, falsely, knavishly; Also, that he was a Practiser upon Men, by Threats and otherways, to sign Writs that bordered upon Perjury, and that the Pursuer had Accession thereto, and that he was a publick Disturber of the Peace, and Subverter of the Truth? And if Provost *Thomas Girven* did no present this Writ, as your Commissioner, to Mr. *Hew Hamilton*, Moderator for the Time to the Presbytery of *Air*? And if Provost *Girven* was not desired by you, that the said *Remarks* should be read to the Presbytery then sitting?

2^{do}, If you have not frequently called the Pursuer, in several Companies, by the Name of *Scoundrel*, since the 6th of June 1739? or the reading of these *Remarks* in the Presbytery.

3rdo, Did you not own to the Pursuer at *Privick House*, the End of *February*, or Beginning of *March* 1739, That it was by your Order, that Mr. *Widdro* took off some Parts of the Possessions of *John Campbell, Ninian Mugerland and Matthew Hood*, the Pursuer's Tenants, in order to make a Dyke straight, that Mr. *Widdro* was then building, or intending to build.

4^{to}, If you did not tell the Pursuer and others, That Mr. *Widdro* had left out as much Ground and more, belonging to you, than the Ground which Mr. *Widdro* had taken off belonging to *Enterkine* the Plaintiff, and therefore you apprehended you had done no Harm to the Pursuer, or Words to this Purpose?

5to, If you did not say to some Person or other at *Tarbolton*, the Day you was at *James Connal's Burial*, that you would do the same Thing over again, with respect to the Plaintiff's Ground, when ever you had a new Occasion, without either taking the Pursuer's Consent, or applying for the Authority of a Judge?

6to, If in viewing the Ground, in order to build Mr. *Widdro's Dyke*, there were not some of the March-stones taken up, and a Part of the High-way thrown upon the Pursuer's Ground, in casting of the Ditch, and building of the Dyke?

7mo, After the Dyke was put up, Did not your Gardner *John Harlie*, with Mr. *Widdro*, and a Son of the Laird of *Dunlop's*, come from your House of *Coilsfield*, and were present with one *David Weir* and *George Cree*, that were sent by the Pursuer, to measure the Quantity of Ground taken off the several Rooms possest by the Plaintiff's Tenants, particularly *John Campbell*, *Ninian Mugerfand* and *Matthew Hood*? And if this was not with your Knowledge and Allowance? Also, if Mr. *Widdro*, *John Harlie*, and the Laird of *Dunlop's* Son, did not tell you what was done when they came home? And if you did not approve of their Management?

The above Interrogators, are but Prejudice of others, that may occur upon examining the Defenders, or Witnessess before the Lord Ordinary, if Need bees.

JO. CUNINGHAME of *Enterkine*.

N. B. 'Tis hoped, the Character of a Gentleman, and Ingenuity of a Minister, will oblige the Defenders to give distinct Answers to each of the above Interrogators, without shifting the Question, or prevaricating; that so this Affair may come to a speedy Issue,



